TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 232.

DULUTH & SUPERIOR BRIDGE COMPANY, APPELLANT,

vs.

STEAMER "TROY," HER BOILERS, ENGINES, &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED FEBRUARY 16, 1907.

(20,575.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 11, 1907.

1 District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Messrs. J. A. Murphy and C. E. Kremer, Proctors for Libelant.
Messrs. Goulder, Holding & Masten, Hoyt, Dustin & Kelley and H. R. Spencer, Proctors for Respondent.

2 District Court of the United States for the Western District of Wisconsin.

At the term of the District Court of the United States of America, for the Western District of Wisconsin, begun and held at the City of Madison, in said district, on the first Tuesday of December, A. D. 1906.

Sanborn, J.

Among other the following proceedings were had, to wit:

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Be it remembered, that heretofore, to wit: on the fourth day of September, in the year of our Lord one thousand nine hundred and six, came the said Duluth & Superior Bridge Company, by Messrs. J. A. Murphy and C. E. Kremer, its proctors, and filed in the office of the clerk of the District Court of the United States for the Western District of Wisconsin, its libel, as follows, to wit:

UNITED STATES OF AMERICA *Western District of Wisconsin:*

In the District Court of the United States.

To the Honorable Arthur L. Sanborn, Judge of the District Court for the Western District of Wisconsin:

The Libel of the Duluth and Superior Bridge Company, a corporation duly organized and existing under the laws of the state of Wisconsin, exhibits this, its libel, against the Steamer Troy, her boilers, engine, boats, tackle, apparel and furniture in a cause of collision, civil and maritime, and alleges as follows, to wit:

First. That at the different times hereafter mentioned, libelant was the sole owner and in possession and control of a certain draw bridge erected across the St. Louis river from Conners Point in the City of Superior, Wisconsin, to Rice Point, in the City of Duluth, Minnesota.

3 Second. That the said St. Louis river is a navigable waterway, and the said bridge was erected in compliance with the provisions of an Act of the Congress of the United States and in conformity with the requirements of the War Department.

Third. That the said bridge is a structure built of steel and resting on permanent piers built in the river, with its shore ends resting on stone or concrete abutments. That there are two permanent spans, each 220 feet long, and one draw span 460 feet long.

Fourth. That the said draw span is placed upon a turntable, and this rests upon a base built of stone and placed upon many submerged wooden spiles driven into the bottom of the river. Upon the turntable of the said draw span, there is all necessary machinery and such appliances that the said draw span can be readily swung around, making an opening up and down the river, leaving channels 200 feet in width on each side of the bridge when open for the passage of vessels. When open, the bridge is guarded or protected by rows of piles up and down the river for a width of sixty feet, and a length of 500 feet. On the channel side of this protection, pieces of timber are fastened as fenders to protect the spiles of the protection, and to prevent injury to vessels passing through the bridge. The bridge is known as a center swing bridge, and when closed, its ends rest on permanent abutments and piers so that street cars, teams and all kinds of vehicles and passengers can cross the same between Duluth and Superior.

Fifth. That on the morning of the 11th day of August, 1906, at a few minutes before one o'clock, the draw span was in charge of a competent, experiences and skilled engineer, the machinery and appliances in use on the said bridge for swinging and opening the same were in good working order, and the electric power was available and ready in sufficient volume to operate and swing the bridge whenever required. The lights required by law were in their proper places and burning brightly. At the time above mentioned both the engineers and the toll gatherer in libelant's employ on the bridge heard the signal whistle of a steamer which afterwards proved to be the Steamer Troy, at a point some distance below the bridge and coming from Duluth. Promptly upon hearing this signal the engineer of the bridge gave a signal by an electric bell to the toll gatherer to close the gates at the approaches to the
4 draw of the bridge for the purpose of stopping the cars and other traffic from coming on to the draw from either side. The toll gatherer had already anticipated the signal of the engineer and had shut the gates on the Duluth side of the bridge, and when signalled by the engineer was on his way to the Superior end of the bridge; these gates, too, he promptly shut and started rapidly to return to the Duluth end of the draw, and while doing so the bridge began to swing with the Superior end up-stream, as the steamer seemed to be bound for Docks at Superior. So soon did the bridge begin to swing after the toll gatherer had shut the Superior gates that he was compelled to run toward the Duluth end in order to get off there before the bridge was opened clear of the abutment. The Troy when she signalled for the bridge was running unusually

and unnecessarily fast, and so continued to, and without checking her speed came on and close to the bridge before it could be opened fully and then blowing short blasts of the whistle came on with considerable headway and swinging to starboard, struck the fender on the center protection of the bridge just below the bridge and glancing along this, struck the bridge which was then well clear of the shore abutment and still swinging rapidly away from the steamer. So great was the headway of the steamer and so heavy the blow that it seemed to lift the bridge and give it a twist, so that it buckled the parts in the center bending and breaking the bridge and both ends fell into the stream and channel almost entirely obstructing the same for the passage of all larger vessels.

Sixth. That immediately after the collision, the steamer backed away from the bridge, and lying some 500 feet away for half an hour, no effort was made by the master or crew to send assistance to any persons that might be injured and helpless among the ruins and wreck of the bridge, although there was nothing to prevent them from so doing.

Seventh. From the time the Troy signalled to the bridge, the latter and its lights were in plain view of those in charge of her navigation, and whether the same was opening or not could be readily seen from the Troy, because it was moonlight and the atmosphere was clear, and there was nothing in the way of the Troy or near her that made her navigation difficult or hazardous, or which would prevent her if navigated with skill and care from approaching the bridge in such a manner as to avoid colliding with and injuring it.

5 Eighth. That from the time the Troy blew her signal for the bridge to open, and until she collided with it, every step was promptly taken to open it as expeditiously as possible, and there was no delay or time lost in any of the operations necessary to open the said bridge for the Troy's passage through the same, the signals of the Troy were heard and promptly obeyed and nothing was left undone to promote her speedy passage; yet so recklessly and negligently was she managed and navigated that she came on with unreasonable, unnecessary and unusual speed, until it was too late to stop her headway and prevent her from colliding with the bridge.

Ninth. That libelant is not fully informed and does not now know all the faults that the said steamer and those navigating her were guilty of, and therefore, is unable to enumerate and set the same out in this libel, and it, therefore, reserves the right, should other faults than those herein alleged be discovered on the hearing of this cause, to charge and urge the same. Libelant charges that those in charge of the navigation of the said steamer were at fault among other things:

(1) In not having on duty and at his post on said steamer a vigilant and competent look-out.

(2) In running at too high a rate of speed when the signal for the opening of the bridge was given.

(3) In approaching the bridge at too great a rate of speed.

(4) In not checking the speed of the steamer as she approached the bridge.

(5) In not checking and if necessary stopping the headway of the steamer before she approached too close to the bridge.

(6) In not waiting until the bridge was entirely opened before she attempted to pass through the same.

Tenth. That by reason of the said collision and the dropping of the said bridge into the river, it was broken, twisted and greatly damaged, and it will require the expenditure of large sums of money to raise the wreck and repair and replace the bridge and maintain watch over same during rebuilding period, during all of which time libelant will lose the use of the same and the tolls which it would earn in its use. That in order not to delay the many vessels
6 and their cargoes which were then above the said bridge bound to points below the bridge, and to enable vessels and cargoes which were bound to points above the said bridge to proceed, it became and was necessary, and libelants *were* bound to and did expend a large sum of money in removing the adjoining permanent span to the north of the said broken draw, and providing a place where the same could be safely placed until it could be replaced. That by reason of the foregoing, libelant has sustained damage in the sum of One hundred fifty five thousand six hundred dollars.

Eleventh. That libelant is informed and believes that the owner and master of the said steamer Troy deny all liability for the damage done to the said bridge.

Twelfth. That the said steamer Troy is now at the port of Superior, and within the admiralty and maritime jurisdiction of this court.

Wherefore, libelant prays that process in due form of law may issue against the said steamer Troy, her engines, boilers, machinery, boats, tackle, apparel and furniture, and this court would be pleased to pronounce for libelant's above demand and decree the same paid with interests and costs and that the said steamer may be condemned and sold to pay the same, and for such other and further relief and redress as in law and justice it may be entitled to receive.

DULUTH & SUPERIOR BRIDGE CO.,
By C. E. KREMER, *Proctor.*

J. A. MURPHY,
C. E. KREMER,
Proctors.

STATE OF WISCONSIN, *County of Douglas, ss:*

On this 1st day of September, A. D. 1906, before me personally appeared D. M. Philbin, an agent and officer, to wit, superintendent of the libelant, who was sworn to the truth of the foregoing libel.

[L. S.] ANNA M. PALMER,
Notary Public, Douglas Co., Wis.

Indorsed: No. 36 A. District Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Steamer Troy. Filed Sep. 4, 1906. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, Superior,
7 Wis. Proctor- for Libelant.

And on same day, to wit, September 4, 1906, came the said Duluth & Superior Bridge Company, by its said proctors, J. A. Murphy and C. E. Kremer, and filed Libelant's Stipulation, as follows, to wit:

Libelant's Stipulation.

UNITED STATES OF AMERICA, *Western District of Wisconsin, ss:*

United States District Court, Special June Term, A. D. 1906.

Whereas, a Libel was filed in this Court on the 4th day of September, A. D. 1906, by the Duluth and Superior Bridge Company against the Steamer Troy, her boilers, engines, machinery, boats, tackle, apparel and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned, and sold to answer the prayer of the libelant; and the said libelant and D. M. Philbin and J. P. Dooley sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelant, or its sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libelants above named shall pay all such costs as shall be awarded against it by this Court, or, in case of appeal, by the Appellate Court.

DULUTH & SUPERIOR BRIDGE CO.,
By C. E. KREMER, *Proctor*.
J. P. DOOLEY.
D. M. PHILBIN.

Taken and acknowledged this 1st day of Sept., A. D. 1906, before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

STATE OF WISCONSIN, *County of Douglas:*

J. P. Dooley and D. M. Philbin, party to the above stipula-
8 tion, being duly sworn, deposes and says that *he* resides in the Western District of Wisconsin, and *is* worth the sum of five hundred dollars over and above all *his* debts and liabilities.

D. M. PHILBIN.
J. P. DOOLEY.

Sworn this 1st day of September, A. D. 1906, before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

Sworn — this 1st day of September A. D. 1906 before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

Indorsed: No. 36. District Court United States, Western District of Wisconsin. In Admiralty. Duluth and Superior Bridge Company *vs.* Steamer Troy. Libelant's Stipulation. Filed Sep. 4, 1906. F. W. Oakley, Clerk.

Whereupon, on same day, to wit, September 4, 1906, attachment issued, as follows, to wit:

District Court of the United States for the Western District of Wisconsin, *ss:*

The President of the United States of America to the Marshal of the Western District of Wisconsin, Greeting:

Whereas, A Libel hath been filed in the District Court of the United States for the Western District of Wisconsin, on the fourth day of September in the year of our Lord one thousand nine hundred and six by the Duluth and Superior Bridge Company, a corporation, against the Steamer Troy, her boilers, engine, boats, tackle, apparel and furniture, in a cause of collision, civil and maritime, for the reasons and causes in the said Libel alleged and mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said Steamer Troy, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said Steamer Troy, her tackle, etc., may, for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelant.

You are Therefore Hereby Commanded, To Attach the said Steamer Troy, her boats, tackle, etc., and to detain the same
9 in your custody until the further order of the said Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held at Madison in and for said Western District of Wisconsin, on Monday, the 1st day of October next, at 10 o'clock of the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ:

Witness, the Honorable Arthur L. Sanborn, Judge of the District Court of the United States, for the Western District of Wisconsin, at the District Court Room, in the City of Madison, in the said District, this fourth day of September in the year of our Lord one thousand nine hundred and six and of the Independence of the United States of America the one hundred and thirty-first.

[L. S.] F. W. OAKLEY, *Clerk.*

Afterwards said writ was returned served, as follows:

WESTERN DISTRICT OF WISCONSIN, *ss:*

I hereby certify and return, that by virtue of the within writ, I did on the fifth day of September A. D. 1906, seize the within named Steamer Troy, her Boilers, Engines, Boats, Tackle, Apparel and Furniture, at Superior, Wis., and now have the same in custody, to await the further order of the Court in the premises.

CHAS. LEWISTON, *Marshal,*
By W. T. PUGH, *Deputy.*

Indorsed: Admiralty A. #36. District Court of the United States for the Western District of Wisconsin. In Admiralty. Attachment. Duluth & Superior Bridge Co. *vs.* Steamer Troy. Filed Sep. 8, 1906. F. W. Oakley, Clerk. J. A. Murphy and C. E. Kremer, Libelant's Proctors, Superior, Wis.

10 Afterwards, to wit, November 15, 1906, came the Western Transit Company, a corporation, as owner of the Steamer "Troy," her boilers, engines, etc., by Messrs. Goulder, Holding & Masten, its proctors, and files its Exceptions and Answer, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin. In Admiralty.

No. —.

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Exceptions and Answer.

To the Honorable Arthur L. Sanborn, Judge of the District Court of the United States for said District:

The Exceptions and Answer of The Western Transit Company, a corporation, as owner of the Steamer "Troy," her boilers, engines, etc., to the libel filed on the admiralty side of this Court of the Duluth & Superior Bridge Company against the same, in a cause of collision, shows and propounds:

I. Your respondent avers that it is and at the times mentioned in the libel was sole owner of the said Steamer Troy, her boilers, engines, etc., which said steamer was a maritime vessel of the United States, engaged in the business of commerce and navigation upon the public and navigable waters of the United States, including the waters of the St. Louis River, referred to in the libel.

Exceptions.

II. Your respondent excepts to said libel as insufficient and as not propounding facts sufficient to constitute a cause of action against

the said steamer within the jurisdiction of this Court on the grounds following:

11 1st. That it appears from the averments of the libel that the bridge alleged to have been injured was a structure on land, for purposes of land travel and convenience exclusively, not erected, maintained or operated in any sense or in any degree in aid of navigation, but, on the contrary, an obstruction and impediment to the navigation of a public navigable water channel and highway, a part of the public waters of the United States, then and there navigable to ships engaged in commerce and navigation.

2nd. That whatever of damage came to the bridge occurred on land, and no part of the same occurred or was suffered on water in place or manner within the jurisdiction of an admiralty court of the United States.

3rd. That the claim of damage propounded in the libel fails to show a case within the admiralty jurisdiction of this Honorable Court according to the grant of such jurisdiction in the Constitution of the United States and the course and practice in admiralty courts of the United States.

Answer.

III. Without in any manner waiving the foregoing exceptions and objections to the jurisdiction of the court, but respectfully insisting, respondent makes answer to the libel as follows:

It has no knowledge concerning the allegations of the first and second articles of the libel, except that the said St. Louis River is a navigable waterway, and so as to all of the other allegations in the first and second articles denies the same.

IV. Respondent believes the allegations of Articles Third and Fourth to be substantially correct as alleged, but, being without knowledge of the specific details therein alleged, denies the

12 same.

V. Touching the allegations of Articles Fifth, Sixth, Seventh and Eighth, respondent says that they are for the most part falsely alleged, and denies each and every allegation contained in those articles except as they may hereinafter be specifically admitted to be true, and avers that the true facts are as follows, and not otherwise:

Having left the port of Buffalo on the 6th of August, 1906, with a cargo of miscellaneous package freight, the Troy reached the port of Duluth on the 10th of August, where she discharged cargo at different docks, and about 1:25 A. M., (Eastern Standard Time) August 11th, left the City dock in Duluth, having on board upwards of four hundred (400) tons of cargo destined for the Minnesota dock above the bridge referred to in the libel. Then and at all times referred to in the libel and in this answer, the Troy was stout, staunch, strong, in every respect properly and sufficiently equipped and furnished, had the usual and proper complement of officers and

crew, properly stationed, attentive to their duties and to the safe navigation of said steamer, and displayed the signal lights required by law, properly lighted, properly placed and burning and showing brightly. While proceeding at checked speed, and a usual and proper speed, still a long way from the bridge, in a usual and proper manner and place, the Troy gave the proper signal with her steam whistle for the opening of the bridge. The night was clear, her lights could be seen, the signal was distinctly sounded and she should have been heard by an attentive watch on the bridge. There was ample time and opportunity for the bridge to be opened in due and regular course, and with proper attention and ordinary management it should have been opened for the passage of the Troy in accordance with ordinary practice, and so turn in such manner that the part covering the draw, to go through which the steamer's course was directed, would swing away from the steamer as she came
13 up to make the passage.

On this occasion the watch or crew on the bridge was insufficient in number and grossly inattentive to their duties and negligent therein, so that although the Troy was approaching in ordinary and usual manner at slow speed, directing her course to take the port draw, with efficient watch to see any signal indicating that the bridge would not be duly opened or that its opening would be delayed beyond the ordinary practice, those operating said bridge, without displaying any signal, but inviting the Troy to come on until she had approached to a point where the bridge should have begun to open, by reason of their gross negligence had not started to open the bridge, whereupon the Troy, blowing an alarm signal and hailing at the same time, reversed her engine full speed astern, the effect of which backing, while it was stopping her headway at the same time threw her bow toward and against the center abutment, and, before her headway could be entirely stopped, she forged up against the bridge, still across and obstructing the draw, although opening at the time, with sufficient momentum to so disturb its bearings that it buckled and went down, the ship herself sustaining slight injury.

VI. Your respondent denies each and every allegation contained in the Ninth Article of the libel, and avers that the collision with the bridge occurred without any fault or negligence on the part of the steamer Troy or those in charge of her navigation, and occurred solely from the fault and insufficiency and weakness in construction of the bridge, and the gross negligence of those in charge of its operation.

VII. Respondent admits that there was damage, but denies that libelant's damage was to the amount alleged in the Tenth Article of the libel.

14 VIII. Respondent admits the allegations of Articles Eleventh and Twelfth of the libel.

IX. That all and singular the premises are true.

Wherefore your respondent prays that the libel herein be dismissed with costs.

THE WESTERN TRANSIT COMPANY, *Claimant and Respondent.*
By GOULDER, HOLDING & MASTEN.

GOULDER, HOLDING & MASTEN,
HOYT, DUSTIN & KELLEY, *Cleveland, O.,*
H. R. SPENCER, *Duluth,*
Proctors for Respondent.

NORTHERN DISTRICT AND STATE OF OHIO,
County of Cuyahoga, ss:

Frank S. Masten, being duly sworn, says that The Western Transit Company, respondent herein, is a corporation, as alleged; that he is one of its Proctors and duly authorized herein; that he has read the foregoing answer and knows the contents thereof, and that the same are true, except as to those matters and things stated to be on information and belief, and as to all such he believes it to be true.

FRANK S. MASTEN.

Subscribed in my presence and sworn to before me by the said Frank S. Masten, this 13 day of November, 1906.

TRACY H. DUNCAN,
Notary Public. [L. S.]

Indorsed: No. 36 A. In the District Court of the United States for the Western District of Wisconsin. In Admiralty. Duluth & Superior Bridge Company, Libelant, *vs.* Steamer "Troy," her boilers, engines, etc., Respondent, The Western Transit Company, Claimant. Exceptions and Answer. Filed Nov. 15, 1906. F. W. Oakley, Clerk. Goulder, Holding & Masten, Proctors for Respondent.

15 Afterwards, to wit, January 12, 1907, order sustaining exceptions filed and entered, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

This cause coming on to be heard on the exceptions to the libel herein, come the parties, by their proctors, and after hearing the arguments of counsel to conclusion, the Court, being fully advised in the premises, orders that the said exceptions be, and the same are hereby sustained and that the libel here[illegible] and it is hereby dismissed at cost of libelant.

A. L. SANBORN, *Judge.*

Indorsed: No. 36 Admiralty. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Order sustaining exceptions. Filed Jan. 12, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Afterwards, to wit, February 4, 1907, came the libelant, by J. A. Murphy and C. E. Kremer, its proctors, and filed Petition for Appeal, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

And now comes the Duluth & Superior Bridge Company, by Charles E. Kremer and J. A. Murphy, its proctors, the libelant in the above entitled cause, and feeling aggrieved that the Court
16 in the above cause sustained the exceptions to the libel and ordered that the same be dismissed, it prays that this Honorable Court allow an appeal to the United States Supreme Court from the decree and order of this Court in said cause.

J. A. MURPHY,
CHARLES E. KREMER,
Proctors for Libelant.

Indorsed: No. 36 A. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Petition for Appeal. Filed Feb. 4, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Afterwards, on same day, to wit, February 4, 1907, order allowing appeal filed and entered, as follows:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

The petition of the Duluth & Superior Bridge Company, the libelant in the above entitled cause, praying for the allowance of an appeal from the decree of this court in said cause to the Supreme Court of the United States, the said appeal is hereby allowed as prayed for.

A. L. SANBORN, *Judge.*

Indorsed: No. 36 Admiralty. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Order allowing appeal. Filed Feb. 4, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Whereupon, on same day, to wit, February 4, 1907, the court made its certificate of the question of jurisdiction in said cause, as follows, to wit:

17 In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

I, Arthur L. Sanborn, Judge of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the exceptions to the libel filed in the above entitled cause, were sustained and the libel dismissed solely on the ground that this court, sitting as a court of admiralty, had and has no jurisdiction over the cause of action set forth in the allegations of the libel because the said cause of action is founded on a collision between the Steamer Troy and the draw swing of a bridge belonging to the libelant, which, at the time of the collision, was across or partially across the St. Louis River, the said collision resulting in greatly damaging the said bridge draw, and that the said cause of action is not maritime because the part of the said bridge which was struck and damaged was not afloat in the said river, but at the time of the collision was supported, operated and swung across the river upon a foundation permanently built in the navigable channel of the said St. Louis River, a navigable waterway of the United States.

This certificate is made in conformity to the Act of Congress of March 3rd 1891, Chapter 517.

Dated this fourth day of February, A. D. 1907.

A. L. SANBORN,
Judge of the District Court of the United States for the Western District of Wisconsin.

18 [Endorsed:] No. 36 Admi'lty. District Court of U. S. Ninth District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Certificate. J. A. Murphy, C. E. Kremer, 822 New York Life Building. Proctor for Libelant. Filed Feb. 4, 1907 F. W. Oakley, Clerk.

19 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, Clerk of the District Court of the United States for said District, do hereby certify that I have compared the fore-

going transcript of record with the original records of this court now remaining of record in my office in the case therein lately pending, of Duluth & Superior Bridge Company, Libelant, *versus* The Steamer Troy, her boilers, engines, etc., Respondent, and that the same is a correct transcript therefrom. I further certify that the accompanying certificate of the question of jurisdiction is the original certificate made by the court in said cause.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the City of Madison, in the said Western District of Wisconsin, this seventh day of February, in the year of our Lord One Thousand Nine Hundred and Seven, and of the Independence of the said United States the One Hundred and Thirty-first.

[Seal U. S. District Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY, *Clerk.*

20 [Endorsed:] No. 36 Admiralty A. United States District Court, Western District of Wisconsin. Duluth & Superior Bridge Company, Libelant, *vs.* Steamer "Troy," her boilers, Engines, etc., Respondent. Transcript of Record.

21 In the District Court of the United States for the Western District of Wisconsin.

In Admiralty.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

Know all men by these presents that we, the Duluth & Superior Bridge Company, as principal, and J. A. Murphy, as surety, are held and firmly bound unto the Western Transit Company in the sum of Five Hundred Dollars ($500.00), to be paid to it or its representatives or assigns, to which payment we bind ourselves, our successors and assigns jointly and severally by these presents.

Signed this 16 day of February, 1907.

Whereas, the above named Duluth & Superior Bridge Company has appealed to the Supreme Court of the United States from the decree of the District Court of the United States for the Western District of Wisconsin, in Admiralty.

Now, therefore the condition of this obligation is such that if the above named appellant, the Duluth & Superior Bridge Company shall prosecute its appeal with effect, and shall answer and pay all damages and costs which may be decreed against it, including such damages for delay and costs of appeal, in case it shall fail to make good its appeal, then the above obligation shall be void, otherwise to

remain in full force and virtue, and that in such case decree may be entered against it and its surety, as the Court may direct.

THE DULUTH AND SUPERIOR BRIDGE CO.,
By D. M. PHILBIN, *Sup't & Agent;*
J. A. MURPHY, *Surety.*

In presence of
ANNA M. PALMER.
MYRTLE H. STEWART.

STATE OF WISCONSIN, *County of Douglas, ss:*

J. A. Murphy, being first duly sworn, says that he is the surety who signed the within and foregoing bond and that he is worth over and above his debts, exemptions and liabilities in property within the State of Wisconsin not exempt from execution the sum of One Thousand ($1000.) Dollars.

J. A. MURPHY.

Subscribed and sworn to before me this 16th day of February, 1907.

[L. S.] ANNA M. PALMER,
Notary Public, Douglas County, Wisconsin.

My commission expires April 13, 1907.

The foregoing bond is approved.
(S'g'd) A. L. SANBORN, *Judge.*

22 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, Clerk of the District Court of the United States of America, for the Western District of Wisconsin, do hereby certify that I have compared the writings annexed to this Certificate, with the originals now in my custody, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In Testimony Whereof, I have hereunto set my hand and duly affixed the Seal of the said Court, at the City of Madison, in the said Western District of Wisconsin, this 18th day of February, in the year of our Lord one thousand nine hundred and seven and of the independence of the said United States the one hundred and thirty-first.

[Seal U. S. District Court, Western District of Wisconsin, Madison.]

F. W. OAKLEY, *Clerk.*
By —— ——, *Deputy.*

23 [Endorsed:] 610 20575 United States District Court, Western District of Wisconsin. In Admiralty. Duluth & Superior Bridge Co. vs. Steamer Troy. Bond on Appeal. Filed Feb. 18, 1907. F. W. Oakley, Clerk.
610, 20575 Feb. 20, '07.

24 [Endorsed:] File No. 20,575. Supreme Court U. S. October Term, 1906. Term No. 610. Duluth & Superior Bridge Company., App't, *vs.* Steamer Troy. Certified copy of appeal bond. Filed February 20th, 1907.
Endorsed on cover: File No. 20,575. W. Wisconsin D. C. U. S. Term No. 232. Duluth and Superior Bridge Company, appellant, *vs.* steamer "Troy," her boilers, engines, &c. Filed February 16, 1907. File No. 20,575.

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 232

DULUTH & SUPERIOR BRIDGE COMPANY,
Appellant,
vs.
STEAMER TROY,
Appellee.

Appeal from the United States District Court Western District of Wisconsin.

MOTION TO ADVANCE CASE.

CHARLES E. KREMER,
J. A. MURPHY,
Proctors for Appellant.

Geo. Rossman Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 232

DULUTH & SUPERIOR BRIDGE COMPANY,
Appellant,
vs.
STEAMER TROY,
Appellee.

Appeal from the United States District Court Western District of Wisconsin.

MOTION TO ADVANCE CASE.

This is a motion to advance the hearing of the above entitled cause so that it may immediately follow the hearing in case No. 84 entitled the *Cleveland T. & V. R. R. Co. et al.* v. *Cleveland Steamship Company,* now pending in this court.

The reason for making this motion is that both cases are appeals from a district court sitting in admiralty and involve, in many respects, the same questions of admiralty jurisdiction.

Number 84, *Cleveland T. & V. R. R. Co.* v. *Cleveland Steamship Co.,* is the case of a libel filed against the Steamer Wm. E. Reis to recover damages to the center pier of libelant's bridge across the Cuyahoga river in the City of Cleveland, and also damages to the shore abutment of the same bridge, located on or close to the bank of the river, and also to the

dock or wharf in the immediate vicinity of the same.

A libel to recover these damages was filed in the United States District Court at Cleveland and exceptions to the jurisdiction were filed contending that the damage was wholly on land and therefore not within the jurisdiction of a court of admiralty. The court held that the exceptions were sustained and dismissed the libel.

An appeal was thereupon taken to this court.

Case No. 232, now sought to be advanced, is the case of a libel filed by the Duluth & Superior Bridge Company, the owner of a bridge across the St. Louis river, which forms the boundary between the states of Minnesota and Wisconsin, the bridge connecting the City of Duluth, Minnesota, and the City of Superior, Wisconsin.

The Steamer Troy, a large lake steamer, while navigating the St. Louis river, struck the swinging draw of this bridge while it was being opened, so that it buckled, bent and broke, and both ends of the bridge fell into the channel, obstructing it for the passage of all larger vessels. The damages claimed amount to the sum of $155,600.

In this case a libel was filed in admiralty against the Steamer Troy in the District Court at Madison, Wisconsin. Exceptions were filed to this libel, alleging that the bridge was located on a permanent structure and the damage therefore occurred on land, and a court of admiralty, for that reason, had no jurisdiction of the cause of action. The exceptions were sustained and the libel ordered dismissed, whereupon an appeal was taken to this court.

The reason for advancing this case is, that both cases may be heard in succession so that the court

may have before it the questions of admiralty jurisdiction arising out of a collision with a wharf or dock, a center protection and shore abutment of a bridge, and the bridge itself, presenting in this way nearly all structures that vessels are liable to encounter while navigating rivers and harbors.

CHARLES E. KREMER,
J. A. MURPHY,
Proctors for Appellant.

Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 232.

DULUTH AND SUPERIOR BRIDGE COMPANY,
LIBELANT-APPELLANT,

vs.

STEAMER "TROY"; WESTERN TRANSIT COMPANY, CLAIMANT AND RESPONDENT, APPELLEE.

BRIEF FOR APPELLEE.

Statement of Case.

The sole question involved is one of jurisdiction of a district court sitting in admiralty. Libelant owned and operated a bridge between the cities of Duluth, Minnesota, and Superior, Wisconsin, crossing the St. Louis river, a navigable stream. The bridge is equipped with a swinging span, supported on a turn-table resting upon a solid, permanent base or structure, with sub-foundation of piles driven into the bottom of the river, with space for the passage of vessels on *either* side of the supporting structure—a center-swing bridge. When closed, its ends rest upon permanent abutments, or piers, forming a passageway over the navigable stream for street cars and foot passengers, and when open allowing the passage of the largest lake steamers, carrying

the immense commerce to and from Superior; in fact, it is the largest swinging bridge in the world.

On August 11, 1906, the large merchant steamer "Troy," in-bound, struck the center pier protection and glanced into the swinging part, or draw, of the bridge, and a very heavy damage was done to the bridge and to the owner, who was obliged to at once remove another span to permit the passage of vessels. Whether this was by fault of the steamer "Troy" or of those in charge of the bridge is not material to the present consideration.

Libel was filed against the "Troy" in the Western District of Wisconsin, in admiralty, claiming damages to the amount of $155,600. The Western Transit Company (appellee) excepted to the libel (7) on the grounds:

> 1. That the bridge injured was a structure on land, exclusively for the purposes of land travel, and in no sense or degree an aid to navigation, but, on the contrary, an obstruction in a navigable water channel and highway, a part of the public waters of the United States;
>
> 2. That the damage sustained by the bridge occurred on land, and no part of the same occurred or was suffered on water or any place within the jurisdiction of an admiralty court of the United States.
>
> 3. That the claim for damages does not show a case of admiralty jurisdiction.

On January 12, 1907, the exceptions having been heard, they were sustained and the libel dismissed (10); appeal was taken on the question of jurisdiction; there are no assignments of error. The court's certificate appears at page 12.

ARGUMENT.

In case No. 84, October term, 1907, practically all the questions involved in this case were argued. The claims there were for dock, abutment, and protection piling damage by collision and by *wash*. Here is added a damage to the swinging portion of the bridge. In No. 84, the steamer proceeded against was out of commission; in winter quarters; here the steamer was navigating.

There is no doubt the owner of the "Troy" (if damaged) could maintain an action *in personam* against the owner of the bridge; but it could not do so *in rem*, since a maritime lien cannot attach to a fixed structure.

> "A maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters."
>
> *The Rock Island Bridge*, 6 Wall., 213-216.

The vessel-owner must in such case be content with the proceeding *in personam*, without the high privilege and priority of a maritime lien.

The owner of the bridge has the privilege of proceeding against the owner of the vessel in the State courts or in the Federal law courts, but not in admiralty. The remedy, therefore, is same to both owners.

Again, since under the present ruling the damage to the bridge is held *not* a marine tort, the owner of the bridge can in most States proceed against the craft, *by name*, under the water-craft laws. If such torts are maritime, the jurisdiction *in rem* is exclusive in the admiralty.

The Glide, 167 U. S., 606.

It is by no means sure that where an owner of a vessel proceeds in the admiralty for damage done by a bridge, or dock, or pier, and both are found at fault, the owner of the

shore property cannot have any damage he may have sustained taken into account in reduction or entire satisfaction of the vessel's claim.

Courts of admiralty having before them a cause properly within their limited jurisdiction have a broad incidental power to administer upon claims and rights involved and not of themselves proper subjects of the jurisdiction. This principle has been applied most frequently where there is a fund or property in court; but if necessary to prevent inequity *arising from any other cause than our dual judicial system*, there is authority to correct.

Andrews vs. Wall et al., 3 How., 568-573.
The Lottawanna, 21 Wall., 558-583.
Schuchardt vs. Ship Angelique, 19 How., 239-241.
The J. E. Rumbell, 148 U. S., 1.

Courts of admiralty are not courts of equity, but, having a cause rightfully before them, they proceed on equitable principles.

O'Brien vs. Miller, 168 U. S., 287.

It is true that in admiralty mutual fault would not deprive a party of his entire claim, but only divide the damage; and a party might fail in one jurisdiction when he could recover half damages in the other. That, however, is the result of the two systems of law, and not of the law, and furnishes no basis for *judicial* change. To bring such claims as are here presented within the jurisdiction would work an actual wrong to the owner of vessel property, not growing out of the dual system, but by failing to give full weight to the word "maritime" in the constitutional grant.

The marine lien which the bridge-owner would have against a wrong-doing ship would have priority over other creditors, even seamen's wages. Counsel for appellant advances this (Brief, p. 8) as a reason for entertaining jurisdiction. The ship-owner damnified by the bridge cannot

have the privilege of lien, but, as now, would have to be content with an action *in personam*.

That is to say: for a damage done by a ship, the damnified person would have a lien against the ship, but for a damage done by a dock, bridge, pier or draw no maritime lien or other lien could exist. In causes properly within the jurisdiction, the rights are reciprocal. The cargo has a lien upon the ship, and the ship on the cargo; colliding vessels have reciprocal liens, etc. Can this parity of rights be preserved as to realty?

And this is so whether the proceeding *in rem* founded on a maritime lien had its origin as a matter of convenience in service as the brief assumes, or in the nature of a forfeiture for a wrong done by the thing.

Holmes, The Common Law, p. 28.

The Blackheath, 195 U. S.

The decision says in terms that it is not opposed in principle to any previous adjudications of the court and is in fact predicated upon them. It has seemed to us, therefore, that the essence of that decision is that the beacon was—

> "an instrument of navigation *and no part of the shore*, but surrounded on every side by water, a mere point projecting from the sea" (p. 365).
>
> "a Government aid to navigation, from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act *beginning and consummated upon navigable water*" (367).

A bridge, however, and its supporting abutments and piers serve only to connect the shores; and while the wrong may begin upon navigable water its consummation is upon land.

Aids to Navigation.

To meet this point, it is urged (Brief, p. 13) that a bridge is an aid to navigation, because—

> (*a*) It is a substitute for ferries, *thereby lessening the number of craft employed in navigation.*

It would be as logical to say that a tunnel is an aid to navigation, or that a railroad running along shore is an aid to navigation, since by carrying passengers and freight otherwise to be transported by water fewer boats would be employed and the dangers of navigation to those remaining be lessened.

> (*b*) The center pier resembles the clump of piles on which the beacon was placed.

> (*c*) The draw was swinging *over* the water to allow the "Troy" to pass when it was struck by the "Troy," moving *through* the water.

We submit, these contentions refute themselves in mere statement.

Again, it is urged (Brief, p. 19) that a bridge is an aid, because under control of the Government; that permission must first be obtained for its erection; it must be provided with proper draw, must have proper machinery for opening, and must be lighted at the owner's expense.

The gist of this contention is this: One obtains permission to partially close or obstruct a navigable channel, coupled with the obligation to maintain, operate, and light in a given manner to permit the exercise of the paramount right of navigation as freely as possible; therefore, the obstruction becomes an *aid* to navigation.

The Rule of Stare Decisis (page 26).

The court has to interpret a written constitution, which is not subject to change except in the manner therein provided. The jurisdiction granted to the Federal judiciary is *limited*. For present purposes it extends to "all cases of admiralty and maritime jurisdiction." As to contracts, it has been settled definitely that, no matter what other maritime nations may do by statute, ordinance or decision, with us the contract must be maritime (as defined by this court) or it may not be entertained by a district court sitting in admiralty. So, when it was recently argued that changes in maritime affairs—reasonableness, convenience, desirability of conforming our jurisdiction to that of other maritime nations—required contracts for the construction of a ship to be brought within our jurisdiction, it was rejected without opinion.

Graham & Morton Transp. Co. vs. Craig Shipbuilding Co., 203 U. S., 577.

As to torts, *locality* was early adopted as the test.

Waring vs. Clark, 5 How., 473.

The Plymouth, 3 Wall., 20.

In the last mentioned case the true meaning of "locality" was given (p. 34):

> "The wrong and injury complained of must have been committed wholly upon the high seas or navigable waters, or, at least, the substance and consummation of the same must have taken place upon these waters to be within the admiralty jurisdiction."

There must be some line of limitation, as the grant is limited. Some uncertainty must exist, as the grant is in general terms. Some inequalities may exist, *must exist*, since wherever the limitation may be placed, there remains

the cases lying immediately adjacent. It cannot be defined exactly; but this is not the fault of, nor does it evidence any error in, the present defining line. The difficulty arises from

> "the complex character of our Government, where separate and distinct specified powers of sovereignty are exercised by the United States and a State independently of each other and within the same territorial limits."
>
> *The St. Lawrence*, 1 Black., 522-526.

Uncertainty and difficulty cannot be avoided; a defining rule cannot be laid down which will meet in advance every possible case. The present test has served long and well. It is consistent with the language employed by the people in their Constitution. It meets their purpose in granting this jurisdiction to the Federal courts, which could only be that in administering international law the tribunals having that authority should be open to all people on the same terms, and not left to the necessarily more or less vacillating policy of individual States. But municipal affairs, non-maritime affairs, should be left to the municipal law, and jealous even of the grant made, the people saved to suitors the right to resort to the common law for relief when it was competent to give it.

If claims for damage to bridges, piers, spring piling, docks, and such like are of admiralty and maritime jurisdiction, where may the determining line be drawn? Eliminate the maritime element, and the field is almost limitless.

> "The fundamental principle underlying all cases of tort, as well as contract, is that, to bring a case within the jurisdiction of a court of admiralty, maritime relations of some sort must exist, for the all-sufficient reason that the admiralty does not concern itself with non-maritime affairs."
>
> *P., W. & B. R. R. Co. vs. S. S. Co.*, 23 How., 209-697.

When a decision is made or principle announced on mature deliberation and has been followed, it should be regarded, and the people have the right to regard it as a just declaration or exposition of the law, and to conduct their affairs on that basis. The certainty of having a definite principle applied enables the profession to advise business men as to the result of their acts with some degree of certainty. If principles announced and decisions made are lightly regarded, the harm reaches beyond the particular case. Unless it touches the person of a citizen or deprives or interferes with his liberty or personal right, a reasonable rule steadily adhered to although not the best is better than changing endeavors to find the perfect. When announced, decisions and principles should not be altered except on most cogent reasoning or when clearly wrong.

Kent's Com., Vol. 1, * 476.

The test now applied to determine whether a tort is maritime or not was deliberately announced and has been steadily adhered to, is reasonable, as certain as may be made under the limiting language in the Constitution, and we submit should not be changed. It is not clearly erroneous, if in error at all, and there is no overpowering reason calling for a change even if it might be made within the Constitutional grant.

We respectfully submit that the decree below should be affirmed.

HARVEY D. GOULDER,
FRANK S. MASTEN,
Advocates.

H. A. KELLEY,
H. R. SPENCER,
S. H. HOLDING,
Counsel.